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IN BOUND VOLUMES

BPH
Lee's Summit, MO

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MIDWEST DIVISION - LSH, LLC,
Employer

and

Case 17-RD-1789

TERRY GAMPHER,
Petitioner

and

NURSES UNITED FOR IMPROVED PATIENT
CARE, CNA/NNOC

Union

DECISION AND DIRECTION OF SECOND ELECTION

The National Labor Relations Board, by a three-member panel, has considered objections to an election held October 29 and 30, 2009, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Decision and Direction of Election. The tally of ballots shows 59 for and 68 against representation with 1 void ballot and 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's

findings¹ and recommendations,² and finds that the election must be set aside and a new election held.³

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the

¹ The Employer and the Union have excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

² In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule Objection 11. We adopt, for the reasons set forth in his report, the hearing officer's finding that the Employer was not denied due process and his recommendations to sustain Objections 4 and 10. We also adopt the hearing officer's recommendation to sustain Objection 7, but in doing so do not pass on his finding that Director of Perioperative Services Linda Rittermeyer's comment, that the union contract did not allow for shared governance, was not objectionable.

In view of our adoption of the hearing officer's recommendation to set aside the election based on Objections 4, 7, and 10, we find it unnecessary to pass on the hearing officer's recommendations to sustain Objection 9 and to overrule Objections 3, 5, 6, 8, and 15.

Member Hayes would adopt the hearing officer's dismissal of Objections 3, 5, 6, 8, and 15 for the reasons stated in the hearing officer's report.

³ We grant the Union's request for the inclusion of language in the notice of election in accordance with *Lufkin Rule Co.*, 147 NLRB 341 (1964). Such language is standard when

payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the first election and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by Nurses United for Improved Patient Care, CNA/NNOC.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to

requested. See NLRB Casehandling Manual (Part Two), Representation Proceedings. Sec. 11452.3.

communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Dated, Washington, D.C., December 22, 2010.

Craig Becker, Member

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD